SUPREME COURT, U. S.

No. 801

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In the Supreme Court of the United States

OCTOBER TERM, A.D. 1968

JOANNE HIRSCHFIELD, SEYMOUR HIRSCHFIELD, AARON PAUL, DR. FLORENCE ROSS, DR. NORMAN T. YONENAGA, ROBERT ZIMMER, LORRAINE ZIMMER, ALICE JEAN STRAUSS, MICHAEL M. PHILLIPS, and GEORGE C. STIMELING, LENE PAREY and SAMUEL PAREY,

Petitioners,

vs.

EDWARD J. BARRETT, COUNTY CLERK OF COOK COUNTY, ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Joanne Hirschfield, Seymour Hirschfield, Aaron Paul, Dr. Florence Ross, Dr. Norman T. Yonenaga, Robert Zimmer, Lorraine Zimmer, Alice Jean Strauss, Michael M. Phillips, George C. Stimeling, Lene Parey and Samuel Parey, petitioners, pray that a writ of certiorari issue to review a final judgment of the Supreme Court of Illinois.

OPINION BELOW

The opinion of the Supreme Court of Illinois is included in the transcript of the record (R. 13); is set forth in full in Appendix "A" hereto, pp. 1-10, and is officially reported in 40 Ill. 2d 224, 239 N.E. 2d 831.

JURISDICTIONAL STATEMENT

The final judgment of the Supreme Court of Illinois was rendered May 29, 1968. A timely petition for rehearing (R. 15) was filed, and denied on September 17, 1968; the judgment thereupon becoming final.

Subdivision (3) of Section 1257 of Title 28, Judiciary and Judicial Procedure, is relied upon as giving jurisdiction to the Supreme Court of the United States to review the final judgment of the Supreme Court of Illinois in this cause. It reads as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States. June 25, 1948, c. 646, 62 Stat. 929." (U.S.C.A. Title 28, Sec. 1257(3).)

It appears clearly from the opinion of the Supreme Court of Illinois that the validity of a State Statute is drawn in question on the ground that it is repugnant to

the Constitution of the United States. Additionally, the amendment to the Constitution of Illinois found in Article VI is likewise challenged under the United States Constitution in that it, too, makes provision for a special privilege for one judicial circuit which is denied to all of the other judicial circuits which are entitled to equal treatment. To guarantee apportionment of the total number of associate judges allotted for one judicial circuit, while apportionment is not provided for all other judicial circuits on a similar basis, is a denial of due process and equal protection as it is guaranteed by the 5th and 14th Amendments to the United States Constitution.

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED

Petitioners seek a review of the final judgment of the Supreme Court of Illinois (R. 13) which sustained a final judgment of the Circuit Court of Cook County denying to petitioner, Michael M. Phillips, the office of Associate Judge of the Circuit Court of Cook County, outside the City of Chicago, to which petitioners claim he had been elected in a duly conducted general election, to fill the unexpired portion of the term of Associate Judge H. R. Stoffels, who had died.

The complaint alleged that the vacancy was not on the ballot, and they were voters who had voted for Phillips in that election by writing in his name for that office. The voters, joined as co-plaintiffs, filed a verified complaint in the Circuit Court of Cook County, alleging that their votes had not been counted and had not been reported and they sought a temporary injunction enjoining Edward J. Barrett, County Clerk of Cook County, Illinois. from destroying the ballot boxes and ballots in certain

named voting precincts. The complaint alleged, further, that by virtue of said write-in votes, Phillips received the only votes that were cast to fill that vacancy and hence he was elected to fill the unexpired portion of that term. The complaint charged that the judges and clerks of election in those election precincts had violated their oath of office and failed to discharge their duties imposed upon them under the election laws of the State of Illinois, and alleged that Phillips was a duly licensed attorney at law, met the requirements for election to such office and that as the result of the death of Associate Judge H. R. Stoffels that office was vacant under the provisions of the Judicial Article (Article VI) of the Constitution of Illinois. Write-in votes were necessary because the office was not on the ballot in that election, although the vacancy was required to be filled pursuant to the said Judicial Article.

George C. Stimeling, in Count II of the complaint, alleges that he is a citizen of the United States and a resident of Peoria County outside the City of Peoria, is a registered and qualified voter, and he complains that both section 72.41(4) of Chapter 37, of the Illinois Revised Statutes, and that portion of Article VI, the Judicial Article in the Illinois Constitution, setting apart the area in Cook County outside the City of Chicago for the election of Associate Judges is unconstitutional, and violates Section 1 of the 14th Amendment and Section 1 of the 15th Amendment to the United States Constitution, and Section 18 and Section 11 of Article II of the Illinois Constitution. He complains that failure to make like provision in similar circumstances denies to all the other judicial circuits uniformity, lacks equality, constitutes a denial of procedural due process, denies the citizens outside of Cook County equal protection of the laws and denies them their civil rights. He charges that a general provision could

have been made in the Judicial Article VI of the Illinois Constitution, but was not made and that therein there is a violation of Section 22 of Article IV of the Illinois Constitution.

He asks the Court to declare the apportionment provision found in Chapter 37, Section 72.41(4) and in Section 8 of Article VI of the Illinois Constitution, discriminatory and unconstitutional, null and void, and in violation of the 14th Amendment of the U. S. Constitution (R. C12-13).

The thrust of Count II, brought by a citizen of Peoria County, is that the apportionment provision found in both the statute and in the Judicial Article is invalid in that a special privilege is provided for one judicial circuit which can never be attained by any of the other judicial circuits.

The Supreme Court of Illinois ruled that Article VI, the Judicial Article of the Constitution of Illinois, and Section 72.41 of Chapter 37 of the Illinois Revised Statutes are valid and constitutional, tested by both the Illinois Constitution and the Constitution of the United States.

It is the theory of the petitioners that the statute complained of, and that portion of the Judicial Article complained of, violate the 14th Amendment of the United States Constitution in that a special privilege is provided for one judicial circuit which privilege is denied to all the other circuits and can never be attained by any other circuits. Only the first judicial circuit is guaranteed apportionment of the total number of associate judges alloted for that circuit. There are other judicial circuits throughout Illinois which are alloted several associate judges, but there is no provision guaranteeing apportionment of those associate judges as provided for Cook County.

The questions were first raised in the trial Court by the Complaint (R. C8, C12).

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the legislature of the State of Illinois can adopt an Act which gives one judicial circuit the privilege of apportionment of the total number of associate judges allotted to that circuit, while denying a similar apportionment privilege to all of the other judicial circuits of the State, without doing violence to the guarantee of due process of law and equal protection of the laws under the 5th and 14th Amendments to the Constitution of the United States.

(2) Whether an amendment to a State Constitution can provide for a special privilege for one judicial circuit, which is denied to all of the other judicial circuits and can never be attained by any other judicial circuit, without violating the 5th and 14th Amendments guarantee of due process of law and equal protection of law.

(3) Whether paragraph (4) of section 72.41 of Chapter 37, Ill. Rev. Stat. (1965) relating to vacancies in the office of associate judge in the City of Chicago violates Sections 22 and 34 of Article IV of the Illinois Constitution and whether as a consequence thereof, the entire provision, with respect to Cook County is void.

CONSTITUTIONS AND STATUTES INVOLVED

The determination of the questions involved depend upon the 5th Amendment and Section 1 of the 14th Amendment to the Constitution of the United States, on parts of Article IV and VI of the Constitution of Illinois and on Section 72.41(4) of Chapter 37 of the Illinois Revised Statutes, all of which appear in Appendix "B", hereto attached pp. 11-15.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

I.

The provisions of the statute complained of, and of the Illinois Constitution as amended by the adoption of the Judicial Article VI effective January 1, 1964, create a special privilege for one judicial circuit which is denied to all of the other judicial circuits of the State; these provisions are void because equal protection and due process of law are denied to all judicial circuits other than Cook County.

Both the Statute, and that portion of the Judicial Article itself which provides for apportionment of associate judges only in Cook County, should be declared violative of the 5th and 14th Amendments to the United States Constitution. No judicial circuit can, under the present Constitution of Illinois, as so amended, enjoy the privilege of apportioning the total allotted number of associate judges of any judicial circuit, other than Cook County. This is neither a general nor a uniform law relating to the court system in Illinois (*The People* v. *The City of Chicago*, 310 Ill. 534, 539).

Special legislation is prohibited by Section 22 of Article IV of the Constitution of Illinois and the Statute and that portion of the Judicial Article complained of clearly constitute special legislation for Cook County. In *Strong* v. *Dingman*, 207 Ill. 385, the Administration Act of the State of Illinois was challenged and the Supreme Court of Illinois there held the Act unconstitutional as special legislation because it only applied to Cook County, saying (p. 390):

> " * * * A law, which provides a different mode of appointment or selection, for a county having a population of 200,000 inhabitants or over, from that which provides for such appointment or selection in counties having a less number of inhabitants, is a special law regulating the practice in courts of justice. It makes the practice as to the mode of appointing and selecting administrators different in one county from what it is in other counties, without resting such difference upon any reasonable basis of classification. * * * "

The Supreme Court of Illinois there states the rule that there shall be no special laws regulating the practice in courts of justice in Illinois. The effect of that decision was to condemn any provision of law in Illinois which would permit the appointment or the selection of administrators in one county on a basis different from that which is required in other counties, without resting such difference upon a reasonable basis of classification. Population differences between judicial circuits will not alone justify a special law. Providing apportionment in one judicial circuit and not in others cannot be condoned constitutionally. If it is based upon population differences, such a provision for apportionment must be accomplished in a fashion that would permit any judicial circuit which attains the status of the classification to be automatically entitled to the same privilege without seeking or having to seek further amendment of the Constitution. In brief, to be done validly, it must be done by a general law.

The Court goes to great length in its opinion to explain why the "Attrition Statute" is not in derogation of Article VI. The Court does not, however, explain why the "Attrition Statute" is immune to Section 22 and Section 34 of Article IV of the Constitution of Illinois. The Court's opinion only casually observes, in passing, that the plain-

tiffs claim that the "Attrition Statute" is repugnant to section 22 and section 34 of Article IV of the Constitution, but the opinion fails to say a word concerning why the limitation in section 34 has no impact on the "Attrition Statute". Article IV provides that:

> "No law based upon this amendment to the Constitution, affecting the Municipal Government of the City of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said City voting on the question at any election . . . "

The opinion of the Court ignores Sam and Lene Parey, voters of Chicago, who are plaintiffs. The opinion of the Court completely ignores the case of *City of Chicago* v. *Reeves,* 220 Ill. 274, relied on by them, which holds that a law affecting the judiciary of the City of Chicago *is* such a law that requires approval as provided in section 34 of Article IV. The opinion completely ignores the fact that the "Attrition Statute" is such a law affecting the judiciary of Chicago and ignores the fact that it was not submitted to the voters of Chicago for approval as required by section 34 of Article IV.

The Court concludes its opinion with the arbitrary holding that the Court will not tolerate upsetting the "Attrition Statute". In support of this the Court cites three cases, none of which even remotely discusses the question of when a statute affecting the Municipal Government of Chicago need not, under Article IV, be submitted to the voters of the City of Chicago. None of these cases is authority that under some circumstances the requirement of section 34 of Article IV may be ignored or waived. The opinion completely fails to explain why the "Attrition Statute" is not violative of and is not in derogation of section 34 of Article IV of the Constitution of Illinois.

It now seems to be the rule of law that the adoption of Article VI acts as an implied repeal of that provision of Article IV which guarantees that no law affecting the judiciary of the City of Chicago shall become effective in Chicago until it is approved by a majority of the legal voters voting on the law. If this be true, the citizens of Chicago have been deprived of a constitutional right without ever having known that the new Judicial Article contained this threat to them. Certainly, nowhere in any of the statements promulgated and issued during the long fight for the Judicial Article, is there the slightest hint that it contained the seed of such a startling and shocking result.

The refusal of the Illinois Supreme Court to consider the Pareys' complaint deprives them of due process of law and is an additional ground for this Court to grant certiorari.

II.

An Amendment to the State Constitution is not immune from the necessity of complying with the Federal Constitution.

In 16A C.J.S., section 459, p. 174, it is said:

> "* * * The same tests apply in determining whether a law violates state constitutional provisions prohibiting the enactment of any law granting special privileges or immunities as apply in determining whether it violates the guaranty under the Fourteenth Amendment of the Federal Constitution of equal protection of the laws."

It is settled that the States' powers are subject to the Fourteenth Amendment. The constitution of the State of Illinois was approved and the admission of the State to the Union followed. No provision of or amendment to the State Constitution can violate the rights of its citizens

which are secured by the Federal Constitution. (*Standard Scale Co.* v. *Farrell,* 249 U.S. 571, 577; 63 L. ed. 780 (1919). The Judicial Article of the State Constitution is not above the Federal Constitution.

The Constitution of Illinois (Section 8, Article VI) directs that the legislature shall prescribe the number of associate judges that each judicial circuit shall have. But the challenged statute ignores the prescribed basis of "judicial circuit" and arbitrarily provides the number of judges by "Counties". This constitutes a denial of due process.

The equal protection of the laws required by the Fourteenth Amendment denies the right, even in a State Constitution, to discriminate between voters by creating judicial circuits in Illinois which are unequal as to voting rights. No constitutional justification appears which supports the creation of a circuit which splits up the Cook County circuit into the part inside the City of Chicago and outside it. No such provision is made for any other county in the State.

It is not possible for any other county to achieve the right to have associate judges elected by a division into out-of-city votes and in-city votes because the constitutional provision is explicit in its limitation to Chicago and Cook County. Other counties in the State have similar big-city situations, but not even by growing to Chicago's population can they achieve this individual control of the right to vote for associate judges in the same fashion.

The discriminatory treatment need not be belabored, it is obvious. The Fourteenth Amendment is violated and the Illinois constitutional provision should be declared void in this regard.

The same constitutional requirement that each person shall have an equal vote requires that each voter for the associate judges in Cook County shall have a vote equal to every other voter's and there can be no diminution thereof by electing associate judges from the City of Chicago separately from those in Cook County outside of the City of Chicago.

III.

The Supreme Court of Illinois has erred in construing the Constitution of Illinois to permit the Statute to deny to the voters of the City of Chicago their constitutional right under Section 34 of Article IV to vote on any changes affecting the judicial system of the City of Chicago.

Section 34 of Article IV of the Illinois Constitution in the second paragraph, provides:

> "No law based upon this amendment to the Constitution, affecting the Municipal government of the City of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; * * *".

This too is ignored by the Statute assailed. The Statute makes no provision for referendum in the City of Chicago, although it clearly makes provision for the judiciary of the City of Chicago, *limiting the right* to vote there to fill vacancies upon deaths of judges. It is a law which affects the City of Chicago and has never been consented to in any referendum in the City of Chicago.

In the case of *City of Chicago* v. *Reeves,* 220 Ill. 274, the Supreme Court had before it the validity of the then new Municipal Court Act. The Court found that the establishment of a municipal court was germane to the object of establishing a local municipal government for Chicago and the Court noted that the Act *was consented to by the legal voters of the City of Chicago* at the general election held

in said City on the first Tuesday after the First Monday of November 1905, in a referendum. The Court (p. 298) asked this question: "Is, therefore, the creation of a municipal court in the City of Chicago germane to the establishment of a local municipal government for the City of Chicago?", and answered "We think this question must be answered in the affirmative". Further, the Court said, at (page 301):

> "If it be germane to the establishment of local municipal government in the City of Chicago to establish a municipal court, we are unable to see why it is not germane to that object to abolish the offices of justices of the peace, police magistrates, and constables in said City and to limit the jurisdiction of justices of the peace in Cook County to territory outside of the city. The municipal city court created is designed to occupy the field of jurisprudence heretofore occupied by justices of the peace and police magistrates in said City, and clearly if it is germane to the establishment of local municipal government in said City to create a municipal court, it is equally germane to abolish the courts already existing in said City and which are to be superseded by said municipal court, otherwise there would exist in the City of Chicago courts of conflicting jurisdiction, the effect of which would be to obstruct the administration of, rather than to administer, the law in said City * * *."

This establishes that any Act, local, special, or general, if it is germane to or affects the local municipal government in the City of Chicago, to be effective must be approved by a majority of the voters voting on the question at an election in the City of Chicago. It clearly points out that a municipal court for the City of Chicago is germane to the establishment of local municipal government and falls in the category of that which requires referendum, to be effective, under Article IV, Section 34 of the Illinois Constitution.

Just as it was the municipal court that was designed and created to occupy the field in jurisprudence previously occupied by justices of the peace and police magistrates, so the office of Associate Judge of the Circuit Court for the City of Chicago is created and designed to now occupy the field of jurisprudence heretofore occupied by the associate judges of the municipal court. Inasmuch as it affects the local municipal government of the City of Chicago, the legislature alone cannot bind the City of Chicago by its enactment of Section 72.41, par. 4, relating to vacancies in the office of associate judge. That provision is ineffective in the City of Chicago until voted upon by qualified electors in the City of Chicago who approve that provision which affects the City of Chicago and its government. That the court system of the City of Chicago is an integral and highly important part of its municipal government is an undebatable issue and since the Constitution in Article IV, Section 34, reserves to the people of Chicago the right to reject or accept what the legislature may provide for its court before it becomes effective, it is clear that that portion of paragraph 4 of Section 72.41, purporting to affect Chicago, has never become effective *in the City of Chicago* because it has never been approved by the qualified electors of Chicago. No provision is therein made for such referendum.

It should be noted that under the former Municipal Court Act, approved in a referendum election in Chicago, the people of the City of Chicago had the legal right to vote for candidates to fill vacancies created by death of Judges in the Municipal Court of Chicago for unexpired terms. *They were not deprived of that right in the Constitution* as amended *by Article VI,* in Section 10. The judicial amendment provided "The office of any judge shall be deemed vacant upon his death * * *. Whenever a vacancy occurs

in the office of judge, the vacancy shall be filled for the unexpired portion of the term by the voters at an election as above provided in this Section, or in such other manner as the General Assembly may provide by law as set out in this Section and approved by the electors * * *." This Court should not condone or approve the present legislative restriction as a binding and effective restriction against filling vacancies *in the City of Chicago* without referendum approval expressed in Chicago. See *The People ex rel.* v. *The City of Chicago,* 310 Ill. 534, holding that a subsequent amendment also requires a referendum to become effective.

CONCLUSION

Much has been heard of concerning the need for law and order. A return to law and order on the part of our people in the streets in Illinois is hopeless while our representatives in high public office pay only lip service to the State and Federal Constitution. It is necessary that our public officers, in the discharge of their public duties, be the first to set the meticulous example of adhering to the principles of our law. It is unjust to insist that the people respect the ordinances and statutes while public officers ignore the Constitution and withhold from the people their constitutional right to a referendum in which the Constitution provides the people of Chicago shall have the right to approve or reject a law affecting the Judiciary of the City of Chicago. The voting rights of these Petitioners have been ignored and denied.

This Court will make a significant contribution toward bringing about a return to law and order by stating clearly that *all* must honor and obey the commandments of the organic law, both State and Federal.

Because both the State and Federal Constitutions have been violated, we pray that this Court will grant certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A

MR. JUSTICE UNDERWOOD delivered the opinion of the court:

Plaintiffs bring this complaint for a mandatory injunction to compel defendant as county clerk of Cook County to count and report the write-in votes of eight of the plaintiffs who voted at the November 8, 1966, general election in Cook County outside of the city of Chicago. These plaintiffs wrote in the name of Michael M. Phillips, also a plaintiff, and voted for him for associate judge of Cook County to fill an allegedly unexpired term resulting from the death of Associate Judge H. R. Stoffels on August 28, 1966. There was no indication on the ballots submitted to the electorate at that election that any such vacancy existed, and Phillips's eight votes constituted all of the votes cast for this office. Plaintiffs therefore now assert that by virtue of their eight votes defendant should certify Phillips as the duly elected judge to fill said allegedly unexpired term. Defendant filed a motion to dismiss the complaint for failure to state a cause of action and the trial court sustained the motion and dismissed the suit. On direct appeal to this court plaintiffs assert both State and Federal constitutional questions.

The following additional facts are not in dispute: that Associate Judge H. R. Stoffels at the time of his death was holding office as associate judge pursuant to paragraph 4 of the schedule of article VI of our constitution by virtue of his election to the office of judge prior to January 1, 1964, for a term running beyond January 1, 1964, which would not expire in 1966; that at the time of his death 71

days prior to the general election of November 8, 1966, and at the time of the general election, there were and are now more than 20 associate judges of the circuit court of Cook County outside Chicago; that no political party nominated a candidate by party convention for the vacancy claimed by plaintiffs to require filling; that eight of the plaintiffs in this action were duly registered and qualified voters residing outside of Chicago in the county of Cook; that plaintiff, Michael M. Phillips, was a resident of the county of Cook outside of the city of Chicago and is a duly licensed attorney at law and a member of the Illinois Bar in good standing; that the defendant county clerk following the general election of November 8, 1966, proclaimed the results of the election as required by law but did not report any of the eight votes cast for plaintiff Phillips to fill the alleged vacancy.

It is clear that the reason for the failure of officials to hold a formal election to fill the alleged vacancy and defendant's refusal to certify Phillips as a duly elected associate judge for the remaining portion of Judge Stoffels's unexpired term was because of the officials' common belief that such an election was prevented by section 1 of the so-called Attrition Statute (Ill. Rev. Stat. 1965, chap. 37, par. 72.41) which reads in pertinent part:

"§ 1. Except as provided in sub-paragraphs (1), (2), (3) and (4), vacancies in the office of associate judge in any county or unit of any circuit shall not be filled.

* * *

"(4) If in the unit comprised of the territory of the circuit of Cook County outside the corporate limits of Chicago the occurrence of a vacancy results in fewer than 12 resident associate judges remaining in office in such unit, the vacancy shall be filled. If in the unit comprised of

the territory of the unit of the circuit of Cook County within the corporate limits of Chicago the occurrence of a vacancy results in fewer than 36 resident associate judges remaining in office in such unit, the vacancy shall be filled.

* * *

"Vacancies authorized to be filled by this Act shall be filled in the manner provided in Article VI of the Constitution."

This Act was passed on August 1, 1963, some nine months after the new judicial amendment (Article VI, hereinafter referred to as the Judicial Article) to the Illinois constitution was adopted, and plaintiffs allege that the Attrition Statute is wholly void because it conflicts with the clear language of the Judicial Article.

The gist of the plaintiffs' argument is that their eight votes should have been counted to effect the election of Phillips because of the language embodied in the second paragraph of section 10 of the Judicial Article:

"The office of any judge shall be deemed vacant upon his death, resignation, rejection, removal or retirement. Whenever a vacancy occurs in the office of judge, the vacancy shall be filled for the unexpired portion of the term by the voters at an election as above provided in this Section, or in such other manner as the General Assembly may provide by law as set out in this Section and approved by the electors."

Plaintiffs contend that "everyone is presumed to know the law", that the Attrition Statute in only permitting the election of associate judges in Cook County outside the city of Chicago to fill vacancies which result in fewer than 12 resident associate judges therefrom is repugnant to the affirmative mandate of the above constitutional provision

and is thus void; that therefore the "law" in this instance was the constitutional dictate of section 10 which required that the judicial vacancy created by Judge Stoffels's death be filled in the election at which plaintiffs cast eight votes for Phillips. They further assert that they should not be disenfranchised by a refusal to count the ballots on which they recorded their votes for Phillips by writing in both the office and his name; and they contend that the failure of the major political parties to nominate candidates for this office under the normal election procedure (Article VI, section 10) may not be used to defeat their diligent efforts to elect Phillips to the "vacant" associate judgeship.

The fallacy of the plaintiffs' argument is that they overstate the effect of what they consider to be the unequivocal and mandatory language of the above-quoted second paragraph of section 10, thereby ignoring the fundamental principle governing constitutional and legislative construction: the intention of the drafters. In *Peabody* v. *Russel,* 301 Ill. 439, 443, we noted: "The same general principles to be applied in construing statutes apply in the construction of constitutions. [Citations.] In the construction of a constitution courts should not indulge in speculation apart from the spirit of the document, or apply so strict a construction as to exclude its real object and intent." In *People ex rel. Chicago Bar Ass'n* v. *Feinberg,* 348 Ill. 549, 566, we stated: "The meaning of the constitution is not to be ascertained by giving too great weight to a single phrase, sentence or section. Its several provisions are all parts of one instrument and must be construed together, giving each its proper consideration." And in construing the same Judicial Article now at issue we have said: "we must read the amendment as a whole and attribute to each part a meaning that is consistent and harmonious with the amendment's overall intendment

and purpose. [Citing cases.]'' *People ex rel. Giannis* v. *Carpentier,* 30 Ill.2d 24, 28.

When the Judicial Article is viewed as a whole it is clear that plaintiffs' contention that the second paragraph of section 10 required the filling of Judge Stoffels's position by the electors of Cook County outside of Chicago is wholly without merit. The second paragraph of section 8 of the Judicial Article set out below clearly invests the legislature with the power to prescribe by statute the number of Cook County associate judges to be elected outside of Chicago subject to a constitutionally designated minimum of 12 resident judges from that area:

''There shall be one circuit court for each judicial circuit which shall have such number of circuit and associate judges and magistrates as may be prescribed by law; provided, that there shall be at least twelve associate judges elected from the area in Cook County outside the City of Chicago and at least thirty-six associate judges from the City of Chicago. In Cook County, the City of Chicago and the area outside the City of Chicago shall be separate units for the election or selection of associate judges. All associate judges from said area outside the City of Chicago shall run at large from said area, such area apportionment of associate judges shall continue until changed by law.''

The Attrition Statute complained of by plaintiffs was in fact an exercise of the legislative discretion specifically granted by the above provision to prescribe ''by law'' the number of Cook County associate judges outside of Chicago. That statute adopts the section 8 minimum of 12, and it represents valid legislation implementing the Judicial Article as the effective date of both the article and the statute was designated as January 1, 1964. The operative

effect of the Attrition Statute is to prevent the election of any associate judge in Cook County outside of Chicago until a vacancy should occur that would leave less than 12 resident associate judges in office from that geographic area. Since Judge Stoffels's death occurred when there were more than 20 associate judges still in office in Cook County outside of Chicago, there was no "vacancy" that could be filled under the Attrition Statute. That this result was contemplated by the drafters of the Judicial Article appears clearly from the fact that section 8 established a minimum number of 12 associate judges from the area concerned rather than adopting as an arbitrary minimum the number of such judges in office on the date the Judicial Article went into effect.

To adopt the construction of the Judicial Article urged by plaintiffs would require the perpetual refilling of *every* judgeship in existence at the effective date of the article and this would completely eliminate the possibility of ever legislatively reducing the number of Cook County associate judges outside of Chicago to the constitutionally prescribed minimum of 12. It would likewise fix the minimum number of judgeships in this State at the number existing on January 1, 1964, a result clearly incompatible with the above quoted language in section 8 as well as the language of the second paragraph of section 11 of the Judicial Article which provides that "*Any law reducing the number of * * * associate judges* in any circuit shall be without prejudice to the right of judges in office at the time of its enactment to seek retention in office as hereinabove provided." (Emphasis added.) The fact that section 11 makes specific reference to the possibility of a "law reducing the number of * * * associate judges" leads us to the inescapable conclusion that a law such as the Attrition Stat-

ute which implements the section 8 minimum of 12 associate judges from outside of Chicago was fully within the intention and contemplation of the constitutional drafters, and we therefore hold that the Attrition Statute is not in derogation of the constitution but wholly in accord with its provisions when viewed as a composite whole. Although plaintiffs emphasize that their position is only that the vacancy must be filled for the remaining portion of the unexpired term, referring to *People ex rel. Sullivan* v. *Powell,* 35 Ill.2d 19, and *People* v. *Rezek,* 410 Ill. 618, and that the provisions of the Attrition Statute make no reference to the "term" but deal only with the "office", it seems to us clear that it would be quite unreasonable to ascribe to the drafters an intent to require an election for an unexpired term when the office will terminate at the end of the term.

The presence of surplusage, however, is not to be presumed in statutory or constitutional construction (*Winnebago County* v. *Industrial Com.,* 34 Ill.2d 332, 335; *Pinkstaff* v. *Pennsylvania Railroad Co.,* 31 Ill.2d 518, 524), and the fundamental rule that each word, clause or sentence must, if possible, be given some reasonable meaning (*People ex rel. Barrett* v. *Barrett,* 31 Ill.2d 360; *Doubler* v. *Doubler,* 412 Ill. 597, 600) is especially apropos to constitutional interpretation. What then is the reasonable meaning of the language of section 10 relied upon by plaintiffs which states that "Whenever a vacancy [due to death, resignation, rejection, removal or retirement] occurs in the office of judge, the vacancy shall be filled for the unexpired portion of the term by the voters at an election * * * or in such other manner as the General Assembly may provide by law as * * * approved by the electors"? The historical note to this section in the Smith-Hurd Annotated Statutes reveals that the provisions of the Judicial Article

respecting the selection and tenure of judges "represent a compromise between the proponents of popular election of judges and the proponents of the American Bar Association or American Judicature Society plan under which judges are initially appointed for a term of years by the governor from among nominees submitted by a nonpartisan commission or committee and thereafter may at their sole discretion seek retention in office from time to time for additional terms 'on their records' on a nonpartisan ballot which poses the sole question whether the particular judge shall be retained in office." S.H.A. Const. Art. 6, § 10.

The compromise relating to the manner of initial selection and the subsequent retention of judges was the result of a hard-fought struggle, and we find that the use of the mandatory language in section 10 is attributable to the drafters' design to state in unequivocal terms the *method* by which new judges would be initially selected to fill vacancies—"by the voters at an election"—unless two thirds of the members of both Houses of the General Assembly propose a different method which is approved by the electorate in a referendum. (Art. VI, sec. 10.) The error made by plaintiffs in this case is that they unduly limit their reading of the second paragraph of section 10 to a few literal words therein that "Whenever a vacancy ocurs in the office of judge, the vacancy shall be filled for the unexpired portion of the term * * * ." We believe that our review of the other sections of the Judicial Article and of the legislative history behind its passage reasonably shows that the intent was that any vacancy occurring under "any law reducing the number of * * * associate judges" (section 11), such as the Attrition Statute, is subject to the constitutional minimum for judges under section 8 (12 in Cook County outside the city of Chicago), and that the occurrence of a vacancy which leaves less than the

prescribed minimum "*shall be filled* for the unexpired portion of the term *by the voters at an election* * * * ." (Emphasis added.) Thus, the mandatory language of section 10 relates to the fact that all new judges shall acquire office *by election,* and not as plaintiffs' argument would suggest that every time a judge holding office at the effective date of the Judicial Article leaves the bench an election must be held to replace him.

In addition to plaintiffs' argument that the Attrition Statute is repugnant to the Judicial Article, they assert that the statute violates sections 22 and 34 of article IV of the Illinois constitution and they intimate that the second paragraph of section 8 of the Judicial Article is violative of the due-process clause of the United States constitution. This last contention is supported neither by reason, nor by citation of authority in plaintiffs' brief, and requires no further discussion. Plaintiffs' remaining contentions are that the references in subparagraph (4) of the Attrition Statute to "the unit comprised of the territory of the circuit of Cook County outside the corporate limits of Chicago" and "the unit comprised of the territory of the unit of the circuit of Cook County within the corporate limits of Chicago" constitute (1) impermissible special legislation (art. IV, sec. 22, const. of Ill.), and (2) legislation affecting the municipal government of the city of Chicago which could not take effect until approved by the voters of that city. (Art. IV, sec. 34, const. of Ill.) We have determined earlier herein that the Attrition Statute validly implements the Judicial Article, and we find the statute's descriptive classifications relating to Chicago and the remaining territory of Cook County outside the corporate limits of Chicago to be fully warranted by use

of substantially the same language in the second paragraph of section 8 of the Judicial Article. Since the Attrition Statute implements and adopts the classification scheme employed in the Judicial Article, this classification is clearly in accord with the Constitution. Neither section 22 nor 34 of article IV may be utilized to upset legislation enacted in compliance with the Judicial Article which was adopted long after those general sections (see *Co-ordinated Transport, Inc.* v. *Barrett,* 412 Ill. 321, 330), and which dealt specifically with the subject matter. *People ex rel. Sickmann* v. *Pennsylvania Railroad Co.,* 385 Ill. 350; *Moyer* v. *Board of Education,* 391 Ill. 156, 159.

The judgment of the circuit court of Cook County dismissing plaintiffs' complaint is affirmed.

Judgment affirmed.

APPENDIX B

UNITED STATES CONSTITUTION

5TH AMENDMENT

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

14TH AMENDMENT

Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

ILLINOIS CONSTITUTION

Article IV

"§ 34. The General Assembly shall have power, subject to the conditions and limitations hereinafter contained to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago. * * *

"No law based upon this amendment to the Constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; and no local or special law based upon this amendment affecting specially any part of the city of Chicago shall take effect until consented to by a majority of the legal voters of such part of said city voting on the question at any election, general, municipal or special. * * *"

Article VI

CIRCUIT COURTS

§ 8. The State shall be divided into judicial circuits each consisting of one or more counties. The county of Cook shall constitute a judicial circuit and the judicial circuits within the Second, Third, Fourth and established from time to time by law. Any judicial circuit composed of more than one county shall be compact and of contiguous counties.

There shall be one circuit court for each judicial circuit which shall have such number of circuit and associate judges and magistrates as may be prescribed by law; provided, that there shall be at least twelve associate judges elected from the area in Cook County outside the City of Chicago and at least thirty-six associate judges from the City of Chicago. In Cook County, the City of Chicago and the area outside the City of Chicago shall be separate units for the election or selection of associate judges. All associate judges from said area outside the City of Chicago shall run at large from said area, such area apportionment of associate judges shall continue until changed by law. There shall be at least one associate judge from each county. There shall be no masters in chancery or other fee officers in the judicial system.

The circuit judges and associate judges in each circuit shall select one of the circuit judges to serve at their pleasure as Chief Judge of such circuit. Subject to the authority of the Supreme Court, the Chief Judge shall have general administrative authority in the court, including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court. The General Assembly shall limit or define the matters to be assigned to magistrates.

"§ 10. All of the judges provided for herein shall be nominated by party convention or primary and elected at general elections by the electors in the respective judicial districts, judicial circuits, counties, or units. Provided, however, the General Assembly may provide by law for the selection and tenure of all judges provided herein as distinguished from nomination and election by the electors, but no law establishing a method of selecting judges and providing their tenure shall be adopted or amended except by a vote of two-thirds of the members elected to each House, nor shall any method of selecting judges and providing their tenure become law until the question of the method of selection be first submitted to the electors at the next general election. If a majority of those voting upon the question shall favor the method of selection or tenure as submitted it shall then become law.

"The office of any judge shall be deemed vacant upon his death, resignation, rejection, removal or retirement. Whenever a vacancy occurs in the office of judge, the vacancy shall be filled for the unexpired portion of the term by the voters at an election as above provided in this Section, or in such other manner as the General Assembly may provide by law as set out in this Section and approved by the electors. Whenever an additional judge is authorized by law, the office shall be filled in the same manner as in the case of a vacancy.

Statute, Chap. 37, Ill. Rev. Stat.

AN ACT relating to vacancies in the office of associate judge. Approved Aug. 9, 1963. L. 1963, p. 2649. Eff. Jan. 1, 1964.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

72.41 Vacancies in office of associate judge.]
§ 1. Except as provided in sub-paragraphs (1), (2), (3) and (4), vacancies in the office of associate judge in any county or unit of any circuit shall not be filled.

(1) If in any county of less than 45,000 inhabitants there remains in office no other resident associate judge following the occurrence of a vacancy, such vacancy shall be filled.

(2) If in any county of 45,000 or more but less than 60,000 inhabitants there remains in office only one resident associate judge following the occurrence of a vacancy, such vacancy shall be filled.

(3) If in any county of 60,000 or more inhabitants, other than the County of Cook, there remain in office no more than 2 resident associate judges following the occurrence of a vacancy, such vacancy shall be filled.

(4) If in the unit comprised of the territory of the circuit of Cook County outside the corporate limits of Chicago the occurrence of a vacancy results in fewer than 12 resident associate judges remaining in office in such unit, the vacancy shall be filled. If in the unit comprised of the territory of the unit of the circuit of Cook County within the corporate limits of Chicago the occurrence of a vacancy results in fewer than 36 resident associate judges remaining in office in such unit, the vacancy shall be filled.

Nothing in paragraph (2) or (3) of this Section shall be construed to require or permit in any county a greater number of resident associate judges than there were on January 1, 1964.

Vacancies authorized to be filled by this Act shall be filled in the manner provided in Article VI of the Constitution. As amended by act approved Aug. 13, 1965, L.1965, P. ....., H.B. No. 1812.